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AMENDED IN SENATE AUGUST 20, 2007

AMENDED IN ASSEMBLY APRIL 18, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1585

Introduced by Assembly Member Lieber
(Coauthor: Assembly Member Saldana)
(Coauthor: Senator Torlakson)

February 23, 2007

An act to amend Section 22963 of the Business and Professions Code, and to amend Section 118950 of the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1585, as amended, Lieber. Tobacco products: nonsale distribution.

Existing law prohibits, except under specified circumstances, the sale or distribution of tobacco products that is not face-to-face. Existing law authorizes the assessment of civil penalties for any violation.

This bill would also include nonsale distribution, as defined, of tobacco products within this prohibition, and would make conforming changes.

This bill would provide that if this bill and AB 1617 are both enacted and become effective on or before January 1, 2008, and this bill amends Section 22963 of the Business and Professions Code and AB 1617 repeals and adds that section, then the provisions of AB 1617 that repeal and add that section shall become operative and the provisions of this bill that amend that section shall not become operative, regardless of the order of enactment.

Existing law makes the nonsale distribution of any smokeless tobacco or cigarettes unlawful in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public.

This bill would include gift certificates, gift cards, or other similar offers, within the prohibited distributions and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22963 of the Business and Professions
2 Code is amended to read:
3 22963. (a) The sale, distribution, or nonsale distribution of
4 tobacco products directly or indirectly to any person under the age
5 of 18 years through the United States Postal Service or through
6 any other public or private postal or package delivery service at
7 locations, including, but not limited to, public mailboxes and
8 mailbox stores, is prohibited.
9 (b) Any person selling or distributing, or engaging in the nonsale
10 distribution of, tobacco products directly to a consumer in the state
11 through the United States Postal Service or by any other public or
12 private postal or package delivery service, including orders placed
13 by mail, telephone, facsimile transmission, or the Internet, shall
14 comply with the following provisions:
15 (1) (A) Before enrolling a person as a customer, or distributing
16 or selling, or engaging in the nonsale distribution of, the tobacco
17 product through any of these means, the distributor or seller shall
18 verify that the purchaser or recipient of the product is 18 years of
19 age or older. The distributor or seller shall attempt to match the
20 name, address, and date of birth provided by the customer to
21 information contained in records in a database of individuals whose
22 age has been verified to be 18 years or older by reference to an
23 appropriate database of government records kept by the distributor,
24 a direct marketing firm, or any other entity. In the case of a sale,
25 the distributor or seller shall also verify that the billing address on
26 the check or credit card offered for payment by the purchaser
27 matches the address listed in the database.

1 (B) If the seller, distributor, or nonsale distributor, is unable to
2 verify that the purchaser or recipient is 18 years of age or older
3 pursuant to subparagraph (A), he or she shall require the customer
4 or recipient to submit an age-verification kit consisting of an
5 attestation signed by the customer or recipient that he or she is 18
6 years of age or older and a copy of a valid form of government
7 identification. For the purposes of this section, a valid form of
8 government identification includes a driver's license, state
9 identification card, passport, an official naturalization or
10 immigration document, such as an alien registration receipt card
11 (commonly known as a "green card") or an immigrant visa, or
12 military identification. In the case of a sale, the distributor or seller
13 shall also verify that the billing address on the check or credit card
14 provided by the consumer matches the address listed in the form
15 of government identification.

16 (2) In the case of a sale, the distributor or seller shall impose a
17 two-carton minimum on each order of cigarettes, and shall require
18 payment for the purchase of any tobacco product to be made by
19 personal check of the purchaser or the purchaser's credit card. No
20 money order or cash payment shall be received or permitted. The
21 distributor or seller shall submit to each credit card acquiring
22 company with which it has credit card sales identification
23 information in an appropriate form and format so that the words
24 "tobacco product" may be printed in the purchaser's credit card
25 statement when a purchase of a tobacco product is made by credit
26 card payment.

27 (3) In the case of a sale, the distributor or seller shall make a
28 telephone call after 5 p.m. to the purchaser confirming the order
29 prior to shipping the tobacco products. The telephone call may be
30 a person-to-person call or a recorded message. The distributor or
31 seller is not required to speak directly with a person and may leave
32 a message on an answering machine or by voice mail.

33 (4) The nonsale distributor shall deliver the tobacco product to
34 the recipient's verified mailing address, or in the case of a sale,
35 the seller or distributor shall deliver the tobacco product to the
36 purchaser's verified billing address on the check or credit card
37 used for payment. No delivery described under this section shall
38 be permitted to any post office box.

39 (c) Notwithstanding subdivisions (a) and (b), if a seller,
40 distributor, or nonsale distributor, complies with all of the

1 requirements of this section and a minor obtains a tobacco product
2 by any of the means described in subdivision (b), the seller,
3 distributor, or nonsale distributor is not in violation of this section.

4 (d) For the purposes of the enforcement of this section pursuant
5 to Section 22958, the acts of the United States Postal Service or
6 other common carrier when engaged in the business of transporting
7 and delivering packages for others, and the acts of a person,
8 whether compensated or not, who transports or delivers a package
9 for another person without any reason to know of the package's
10 contents, are not unlawful and are not subject to civil penalties.

11 (e) (1) (A) For the purposes of this section, a "distributor" is
12 any person or entity, within or outside the state, who agrees to
13 distribute tobacco products to a customer or recipient within the
14 state. The United States Postal Service or any other public or
15 private postal or package delivery service are not distributors within
16 the meaning of this section.

17 (B) A "nonsale distributor" is any person inside or outside of
18 this state who, directly or indirectly, knowingly provides tobacco
19 products to any person in this state as part of a nonsale
20 transaction. "Nonsale distributor" includes the person or entity who
21 provides the tobacco product for delivery and the person or entity
22 who delivers the product to the recipient as part of a nonsale
23 transaction.

24 (C) "Nonsale distribution" means to give smokeless tobacco or
25 cigarettes to the general public at no cost, or at nominal cost, or
26 to give coupons, coupon offers, gift certificates, gift cards, or other
27 similar offers, or rebate offers for smokeless tobacco or cigarettes
28 to the general public at no cost or at nominal cost. Distribution of
29 tobacco products, coupons, coupon offers, gift certificates, gift
30 cards, or other similar offers, or rebate offers in connection with
31 the sale of another item, including tobacco products, cigarette
32 lighters, magazines, or newspapers shall not constitute nonsale
33 distribution.

34 (2) For the purpose of this section, a "seller" is any person or
35 entity, within or outside the state, who agrees to sell tobacco
36 products to a customer within the state. The United States Postal
37 Service or any other public or private postal or package delivery
38 service are not sellers within the meaning of this section.

39 (3) For the purpose of this section, a "carton" is a package or
40 container that contains 200 cigarettes.

1 (f) A district attorney, city attorney, or the Attorney General
2 may assess civil penalties against any person, firm, corporation,
3 or other entity that violates this section, according to the following
4 schedule:

5 (1) A civil penalty of not less than one thousand dollars (\$1,000)
6 and not more than two thousand dollars (\$2,000) for the first
7 violation.

8 (2) A civil penalty of not less than two thousand five hundred
9 dollars (\$2,500) and not more than three thousand five hundred
10 dollars (\$3,500) for the second violation.

11 (3) A civil penalty of not less than four thousand dollars (\$4,000)
12 and not more than five thousand dollars (\$5,000) for the third
13 violation within a five-year period.

14 (4) A civil penalty of not less than five thousand five hundred
15 dollars (\$5,500) and not more than six thousand five hundred
16 dollars (\$6,500) for the fourth violation within a five-year period.

17 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
18 or subsequent violation within a five-year period.

19 SEC. 2. Section 118950 of the Health and Safety Code is
20 amended to read:

21 118950. (a) The Legislature hereby finds and declares the
22 following:

23 (1) Smoking is the single most important source of preventable
24 disease and premature death in California.

25 (2) Smoking is responsible for one-quarter of all death caused
26 by fire.

27 (3) Tobacco-related disease places a tremendous financial
28 burden upon the persons with the disease, their families, the health
29 care delivery system, and society as a whole.

30 (4) Despite laws in at least 44 states prohibiting the sale of
31 tobacco products to minors, each day 3,000 children start using
32 tobacco products in this nation. Children under the age of 18 years
33 consume 947 million packages of cigarettes in this country yearly.

34 (5) The earlier a child begins to use tobacco products, the more
35 likely it is that the child will be unable to quit.

36 (6) More than 60 percent of all smokers begin smoking by the
37 age of 14 years, and 90 percent begin by the age of 19 years.

38 (7) Use of smokeless tobacco products among minors in this
39 state is increasing.

1 (8) Smokeless tobacco or chewing tobacco is harmful to the
2 health of individuals and may cause gum disease, mouth or oral
3 cancers, increased tooth decay and leukoplakia.

4 (9) Tobacco product advertising and promotion are an important
5 cause of tobacco use among children. More money is spent
6 advertising and promoting tobacco products than any other
7 consumer product.

8 (10) Distribution of tobacco product samples, coupons, coupon
9 offers, gift certificates, gift cards, or other similar offers is a
10 recognized source by which minors obtain tobacco products,
11 beginning the addiction process.

12 (11) It is the intent of the Legislature that keeping children from
13 beginning to use tobacco products in any form and encouraging
14 all persons to quit tobacco use shall be among the highest priorities
15 in disease prevention for the State of California.

16 (b) It is unlawful for any person, agent, or employee of a person
17 in the business of selling or distributing smokeless tobacco or
18 cigarettes to engage in the nonsale distribution of any smokeless
19 tobacco or cigarettes to any person in any public building, park or
20 playground, or on any public sidewalk, street, or other public
21 grounds, or on any private property that is open to the general
22 public.

23 (c) For purposes of this section:

24 (1) "Nonsale distribution" means to give smokeless tobacco or
25 cigarettes to the general public at no cost, or at nominal cost, or
26 to give coupons, coupon offers, gift certificates, gift cards, or other
27 similar offers, or rebate offers for smokeless tobacco or cigarettes
28 to the general public at no cost or at nominal cost. Distribution of
29 tobacco products, coupons, coupon offers, gift certificates, gift
30 cards, or other similar offers, or rebate offers in connection with
31 the sale of another item, including tobacco products, cigarette
32 lighters, magazines, or newspapers shall not constitute nonsale
33 distribution.

34 (2) "Smokeless tobacco" means (A) a loose or flat, compressed
35 cake form of tobacco that may be chewed or held in the mouth or
36 (B) a shredded, powdered, or pulverized form of tobacco that may
37 be inhaled through the nostrils, chewed, or held in the mouth.

38 (3) "Public building, park, playground, sidewalk, street, or other
39 public grounds" means any structure or outdoor area that is owned,
40 operated, or maintained by any public entity, including, but not

1 limited to: city and county streets and sidewalks, parade grounds,
2 fair grounds, public transportation facilities and terminals, public
3 reception areas, public health facilities, public recreational
4 facilities, and public office buildings.

5 (4) "Private property that is open to the general public" means
6 any structure or outdoor area that is owned, operated, or maintained
7 by any private entity and that is open for entry or use by the general
8 public, whether or not a fee or charge is imposed for entry or use.

9 (d) Any person who violates this section shall be liable for a
10 civil penalty of not less than two hundred dollars (\$200) for one
11 act, five hundred dollars (\$500) for two acts, and one thousand
12 dollars (\$1,000) for each subsequent act constituting a violation.
13 Each distribution of a single package, coupon, coupon offer, gift
14 certificates, gift cards, or other similar offers, or rebate offer to an
15 individual member of the general public in violation of this section
16 shall be considered a separate violation.

17 (e) Neither this section nor any other provision of law shall
18 invalidate an ordinance of, or prohibit the adoption of an ordinance
19 by, a city or county regulating distribution of smokeless tobacco
20 or cigarette samples within its boundaries that is more restrictive
21 than this section. An ordinance that imposes greater restrictions
22 on the sale or distribution of tobacco than this section shall govern,
23 to the extent of any inconsistency between it and this section.

24 (f) Subdivisions (a) to (e), inclusive, do not apply to any public
25 building, park, playground, sidewalk, street, or other public
26 grounds, or any private property that is open to the general public
27 where minors are prohibited by law. Subdivisions (a) to (e),
28 inclusive, do not apply to any public building, park, playground,
29 sidewalk, street, or other public grounds open to the general public
30 and leased for private functions where minors are denied access
31 by a peace officer or licensed security guard on the premises.

32 (g) Subdivisions (a) to (e), inclusive, do not apply to any private
33 property that is open to the general public where minors are denied
34 access to a separate nonsale distribution area by a peace officer or
35 licensed security guard stationed at the entrance of the separate
36 nonsale distribution area and the separate nonsale distribution area
37 is enclosed so as to prevent persons outside the separate nonsale
38 distribution area from seeing the nonsale distribution unless they
39 undertake unreasonable efforts to see inside the area.

1 *SEC. 3. This bill and AB 1617 both contain provisions making*
2 *changes to Section 22963 of the Business and Professions Code.*
3 *This bill would amend the section and AB 1617 would repeal,*
4 *recast, and add the section. If both bills are enacted and become*
5 *effective on or before January 1, 2008, Sections 2 and 3 of AB*
6 *1617 repealing and adding Section 22963 of the Business and*
7 *Professions Code shall become operative and Section 1 of this bill*
8 *amending Section 22963 of the Business and Professions Code*
9 *shall not become operative, regardless of the order of enactment.*

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